

REMARKS

The office action dated November 30, 2006 (the “Office Action”) has been received and noted. Claims 1-9 were examined. Claims 1-9 were rejected. Claims 1, 7, 8 and 9 are amended. Claims 10 and 11 are new. Claims 1, 7 and 8 are amended to correct minor grammatical errors and to conform with conventional patent claims drafting nomenclature. Support for the additional amendment in claim 8 and for the new claims can be found on, for example, Paragraph [00010] of the Application. As such, no new matter has been added. Claims 1-11 remain in the Application. Reconsideration is requested in view of the above-amendments and following remarks.

I. Claims Rejected Under 35 U.S.C. § 102

A. Claims Rejected as Anticipated by *Solazzi*

Claims 1-3 and 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,009,766 to Solazzi (“*Solazzi I*”). A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. MPEP § 2131. Applicant respectfully submits that each and every element in independent claim 1 and its respective dependent claims is not set forth in the cited reference.

Independent claim includes the limitation of “a cover which is to be arranged on ***a free surface of the liquid sample*** and is not rigidly connected to the container wall.” (App., claim 1). Representatively, cover 13 covers essentially the entire free surface 11 of liquid sample 7 and is not rigidly connected to container wall 3. (App., ¶ [00010]; FIG. 1). These features allow cover 13 to move up and down on the liquid surface of liquid sample 7. By providing cover 13 in contact with the liquid surface of liquid sample 7, evaporation is greatly reduced since evaporation is an essentially kinetic process which takes place at a free surface of a liquid. Thus, by substantially or completely reducing the free surface of liquid sample 7, cover 13 greatly reduces the amount of evaporation which allows the sample holder to be used in an x-ray apparatus maintained at vacuum. (App., ¶ [00013]). By contrast, *Solazzi I* discloses surface region 44 of thin film material 40 pulled taut across an open end 22 of cell body 12. (col. 6, lns. 32-35; FIG.

4). A portion of the thin film material 40 becomes pinched between outside wall 26 of cell body 12 and interior wall 42 of annular collar 14. (col. 6, lns. 26-28). In other words, surface region 44 of thin film 40 is fixed to the sides of cell body 12. As a result, surface region 44 of thin film 40 is not arranged on a free surface of a liquid contained within cell body 12, but is rather pulled taut across the open surface region of cell body 12. Such a configuration does not allow surface region 44 of thin film 40 to move up and down on the liquid surface. Thus, *Solazzi I* does not disclose each and every element of independent claim 1.

Dependent claims 2, 3 and 5 depend on independent claim 1 and therefore include all of its limitations. Accordingly, Applicant respectfully submits that independent claim 1 and its respective dependent claims are allowable over the cited reference.

B. Claims Rejected as Anticipated by *Solazzi II*

Claims 1 and 6 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,409,854 to Solazzi ("*Solazzi II*"). Applicant respectfully submits that each and every element in independent claim 1 and its respective dependent claims is not set forth in the cited reference. As discussed previously, independent claim includes the limitation of "a cover which is to be arranged on *a free surface of the liquid sample* and is not rigidly connected to the container wall." (App., claim 1). The significance of this limitation is discussed in detail in section I(A) of this Response. By contrast, *Solazzi II* discloses sample cup 10 which includes cell 17, bottom 35 and collar 18. (col. 3, lns. 39-68). Top 34 of cell 17 is covered by thin plastic film 40 with side edges 42 of the film directed about the sides of cell 17. (col. 3, lns. 45-50). Thus, thin plastic film 40 is fixed to the sides of cell 17. As a result, thin plastic film 40 is not arranged on a free surface of a liquid contained within cell 17, but is rather pulled taut across top 34 of cell 17. Such a configuration does not thin plastic film 40 to move up and down on the liquid surface. Thus, *Solazzi II* does not disclose each and every element of independent claim 1.

Dependent claim 6 depends on independent claim 1 and therefore includes all of its limitations. Accordingly, Applicant respectfully submits that independent claim 1 and its respective dependent claims are allowable over the cited reference.

C. Claims Rejected as Anticipated by *Fildes*

Claims 1 and 4 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,001,389 to Fildes (“*Fildes*”). Applicant respectfully submits that each and every element in independent claim 1 and its respective dependent claims is not set forth in the cited reference. As discussed previously, independent claim includes the limitation of “a cover which is to be arranged on *a free surface of the liquid sample* and is not rigidly connected to the container wall.” (App., claim 1). The significance of this limitation is discussed in detail in section I(A) of this Response. By contrast, *Fildes* discloses a test tube covered with silver foil. (col. 7, ln. 39). *Fildes* is absent of any mention that the foil is arranged on a free surface of a liquid sample. In fact, because the test tube is subsequently centrifuged, one of ordinary skill in the art would appreciate that the foil is covered over the entire opening of the test tube and crimped along the outer surface of the test tube. Thus, *Fildes* does not disclose each and every element of independent claim 1.

Dependent claim 4 depends on independent claim 1 and therefore includes all of its limitations. Accordingly, Applicant respectfully submits that independent claim 1 and its respective dependent claims are allowable over the cited reference.

II. Claims Rejected Under 35 U.S.C. § 103

Claims 7-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Solazzi I*. In order to establish a *prima facie* case of obviousness: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference; (2) there must be a reasonable expectation of success; and (3) the references when combined must teach or suggest all of the claim limitations. MPEP § 2142. Applicant respectfully submits that a *prima facie* case of obviousness has not been established.

More particularly, the cited reference does not teach or suggest all of the claim limitations of amended independent claim 7. Amended independent claim 7 includes the limitation of

“providing *a cover which is smaller than the opening* and *freely movable* relative to the container walls on a free surface of the liquid sample.” (App., claim 7). The significance of the limitation “freely movable relative to the container walls” is discussed in detail in section I(A) of this Response. Moreover, as discussed in more detail in section I(A) of this Response, *Solazzi I* does not teach or suggest this limitation. Furthermore, *Solazzi I* does not teach or suggest the limitation that thin film material 40 is smaller than the opening of cell body 12 because thin film material 40 is pulled taut across the opening of cell body 12. As such, *Solazzi I* does not teach or suggest all of the limitations of independent claim 7.

Dependent claim 8 depends on independent claim 7 and therefore includes all of its limitations. Accordingly, Applicant respectfully submits that independent claim 1 and its respective dependent claims are allowable over the cited reference.

III. New claims 10, 11

New dependent claims 10 and 11 (which depend from independent claims 1 and 8, respectively) are similarly allowable over *Solazzi I*, *Solazzi II* and *Fildes* because, in addition to including the limitations discussed previously, i.e., “a cover which is to be arranged on *a free surface of the liquid sample* and is not rigidly connected to the container wall,” none of the cited references describe the additional limitation that “the cover has a diameter slightly smaller than the container opening and is freely movable relative to the container wall.” (App., claims 10, 11). Accordingly, Applicant respectfully submits that new claims 10 and 11 are allowable over the cited references.

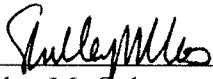
CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 500-4787.

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on February 22, 2007.

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